



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 5, 1996

Mr. Roland Castaneda
General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR96-0146

Dear Mr. Castaneda:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38073.

The Dallas Area Rapid Transit ("DART") received a request for nine separate documents requests pertaining to Contract No. 93000076. You contend the requested information is excepted from required public disclosure under section 552.103(a) of the Government Code. You have provided this office with a representative sample of the requested information for our review. We have considered the exceptions you claimed and have reviewed the sample documents.

You relate that the requester submitted a claim which triggered the Claims Dispute Process outlined in Chapter 10 the DART Procurement Regulations, which provides for administrative remedies to resolve contract disputes.¹ The claim preceded the Open Records request.

¹By submission of a bid, proposal, offer, or quotation in response to this solicitation, the bidder or offeror agrees to exhaust its administrative remedies under Chapter 10 of the Authority's Procurement Regulations or the Disputes Clause of any resulting contract prior to seeking judicial relief of any type in connection with any matter related to this solicitation, the award of any contract, and any dispute under any resulting contract. *Dallas Area Rapid Transit Procurement Regulations (Jun 86)*, Chapter 10--Administrative Remedies at 327.

You contend that the contractual administrative remedies proceeding is litigation within the meaning of 552.103(a).² To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex.App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

The Open Records Act does not define "litigation." The section 552.103(a) exception was designed to protect the interests of the state in adversary proceedings or in negotiations leading to settlement. Open Records Decision No. 301 (1982). "Litigation" encompasses proceedings conducted in quasi-judicial forums as well as strictly judicial ones. *Id.* "Litigation" has been defined by the dictionary to include "a controversy involving adverse parties before an executive governmental agency having quasi-judicial powers and employing quasi-judicial procedures." Webster's Third International Dictionary at 1322. See *San Antonio Public Service Company v. Long*, 72 S.W.2d 696 (Tex. Civ. App.--San Antonio 1934, no writ). See also §2001.051 Government Code. (general rights and procedures for contested cases under the Administrative Procedures Act).

In this instance you have not demonstrated that the dispute process triggered by the contractor's claim for equitable adjustment constitutes litigation. Specific statutory authority which establishes DART as an executive governmental agency having quasi-judicial powers and employing quasi-judicial procedures in contract disputes is lacking.

In fact, the contracts disputes procedures themselves provide the language, "It is the Authority's policy to try to resolve all controversies by mutual agreement without litigation."³ By DART's own regulatory language, the immediate proceedings before it do not constitute litigation. Moreover, DART does not provide any statutory authority for the premise that its proceedings are contested cases and, consequently, litigation under the Administrative Procedures Act of the Government Code.

You have not met your burden in establishing that the nine representative documents referred to as "Attachment E" pertain to "litigation" to which DART would be a party to enable you to withhold the records under section 552.103. DART therefore must release the documents in their entirety.

²Pertinent provision contains the procedures for resolving contract disputes pursuant to the Disputes Clause required by the DART regulation to be included in DART contracts. *Dallas Area Rapid Transit Procurement Regulations (Jun 86)*, Chapter 10--Administrative Remedies at 334.

³*Dallas Area Rapid Transit Procurement Regulations (Jun 86)*, Chapter 10--Administrative Remedies at 334.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/rho

Ref.: ID# 38073

Enclosures: Submitted documents

cc: Mr. Steve Hutchinson
Executive Vice President
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(w/o enclosures)